



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 15, 2003

Ms. Jennifer Soffer
Assistant General Counsel
Texas Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018

OR2003-3272

Dear Ms. Soffer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181097.

The Texas State Board of Medical Examiners (the "board") received a written request for "all non-exempt, non-confidential" e-mail addresses held by the board, the State Board of Physician Assistant Examiners, and the State Board of Acupuncture Examiners. You state that upon further clarification, the requestor stated that he is primarily interested in the e-mail addresses of the board's licensees. You contend that the requested information, a sample of which you submitted to this office, is excepted from required disclosure pursuant to section 552.137 of the Government Code.¹

We note at the outset that you did not submit the requested information to this office in a timely manner. Under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the

¹Because the requestor seeks only e-mail addresses, we do not address the extent to which the other information contained in the submitted records is subject to required public disclosure.

documents. You did not, however, submit to this office the sample of the requested information until May 14, 2003, more than fifteen days after the board's receipt of the records request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(a) and section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, because you contend that the submitted information is made confidential by other law, we will consider your arguments for non-disclosure.

Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

After reviewing the sample of e-mail addresses you submitted to this office, we agree that those e-mail addresses consist of private e-mail addresses that must be withheld pursuant to section 552.137 unless the board receives an affirmative consent to release from the person to whom an e-mail address belongs. We note, however, that because section 552.137 does not apply to a public employee's governmental e-mail address, the board must release to the requestor all such e-mail addresses listed by its licensees. Although you argue that complying with the records request "would create a substantial interference with the ongoing operations of" the board, please note that the administrative inconvenience of providing public records is not grounds for refusing to comply with the mandates of the Public Information Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Finally, you request that this office issue a previous determination to categorically encompass the type of e-mail addresses that were requested. You also request that the board be allowed to apply such a previous determination retroactively. In light of the board's history of

noncompliance with the Public Information Act in responding to such requests for information, we decline to issue such a determination at this time, whether to be retroactively applied or applied to future requests. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 181097

Enc: Submitted documents

c: Mr. Brad L. Armstrong, J.D.
206 Westwood Terrace
Austin, Texas 78746
(w/o enclosures)